

SECTION 12.45 LEAVES OF ABSENCE

Last Update: 5/11

This section reviews leaves provided by Article X of the UE/IUP and AFSCME agreements. The SPOC agreement does not contain provisions for leave without pay.

Procedure for Requesting Leave without Pay (LWOP)

Employees must request leave without pay in writing at least thirty (30) calendar days in advance of the leave, whenever possible. Supervisors are obligated to approve or deny the leave request in writing within the time limits set out in the applicable agreement.

Specific Leaves of Absence

Each type of leave of absence in Article X has specific criteria which must be met before the leave is granted. Each has its own time limits or maximums for the amount of time which will be granted. Refer to the [Family and Medical Leave \(FMLA\) policy](#) for further information on types of leave covered by FMLA.

- **Parenting Leave – AFSCME**

Parenting leave comes in two parts: 1) paid or unpaid sick leave for the period of disability or care and necessary attention; and 2) leave without pay for the period of non-disability. Vacation or earned compensatory time may be used in lieu of unpaid leave. If the leave is covered by FMLA, the employee is required to exhaust all appropriate paid time before LWOP is granted.

- **Parenting Leave – UE/IUP Social Services Unit**

Parenting leave comes in two parts: 1) paid or unpaid sick leave for the period of disability; and 2) leave without pay for the period of non-disability. Vacation, paid personal leave or earned compensatory time may be used in lieu of unpaid leave. If the leave is covered by FMLA, the employee is required to exhaust all appropriate paid time before LWOP is granted.

- **Parenting Leave – UE/IUP Science Unit**

Parenting leave comes in two parts: 1) paid or unpaid sick leave for the period of disability or care and necessary attention; and 2) leave without pay for the period of non-disability. Vacation or earned compensatory time may be used in lieu of unpaid leave. If the leave is covered by FMLA, the employee is required to exhaust all appropriate paid time before LWOP is granted.

- **Leave Prior to Childbirth**

Pregnant employees are not required to leave work prior to delivery and may continue working until a physician certifies that the employee is unable to perform the essential functions of the position. The employee will be granted paid or unpaid sick leave prior to delivery when a physician certifies that the employee is unable to perform the essential functions of the position. The employee may be granted leave prior to delivery if disability is not a factor and the employee simply wants time off from work. This time, however, may not be charged to sick leave. Refer to the [FMLA policy](#) for additional information about restrictions on medical verification of pregnancy and childbirth for FMLA-eligible employees.

- **Period of Disability**

An employee will be granted leave for all periods of disability related to pregnancy and childbirth. This time may be covered with paid leave or be considered a leave of absence without pay. (See the [FMLA policy](#) for eligible employees.)

Paid sick leave is granted only for that period of time when from the employee is unable to perform assigned duties due to pregnancy or its complications, delivery, and recovery. This disability must be substantiated by medical documentation, unless otherwise provided for under FMLA.

The fact that an employee is still under a physician's care or that the doctor has not yet released the employee or performed the six-week checkup following childbirth does not, by itself, mean that the employee is disabled and eligible for sick leave. As with any other disability, physicians must be advised of the duties and responsibilities of the job in order to make their decision regarding disability. This also reduces the tendency to equate a disability with the six-week checkup or the employee's desire to remain at home with the baby.

- **Military Service**

See section [6.10 Types of Leave](#).

- **Educational Leave**

See section [6.10 Types of Leave](#).

Medical Leaves of Absence

Employees covered by the AFSCME and UE/IUP agreements are eligible for a medical leave of absence if they meet all of the following criteria:

- One year of seniority.
- Have exhausted all sick leave.
- Their illness or injury exceeds or will exceed ten (10) calendar days after expiration of accrued sick leave.
- Appropriate medical verification of continuing disability is submitted.

If the employee requests a medical leave and meets the criteria listed above, the medical leave must be granted for up to ninety (90) calendar days. See the [FMLA policy](#) for information on FMLA.

If the employee desires time beyond the original ninety (90) days of medical leave, extensions of the medical leave of absence of up to ninety (90) days may be granted at the discretion of the appointing authority. Extensions, plus the original ninety (90) day leave, may not exceed a total of one (1) year.

If an employee has exhausted both FMLA and the initial ninety (90) day leave without pay and the employer does not grant an extension of leave, options are: 1) to terminate the employee if the employee cannot return to work; 2) to place the employee in a "950" position number to complete the long term disability (LTD) qualifying period if the employee applies for LTD; or 3) to allow the employee to utilize available vacation and compensatory leave if not previously used.

The FMLA policy should be reviewed prior to the approval or denial of any medically-related leave of the employee or the employee's immediate family as defined by the FMLA policy.

Fringe Benefits during Periods of Leave without Pay

The agreements specifically preclude accrual of vacation, sick leave, or payment for holidays while an employee is on leave without pay (with the exception of temporary layoffs under the AFSCME agreement). The only benefits which remain intact for the first thirty (30) days are contract coverage, original seniority date, and employment date. The State's share of the insurance will be paid beyond thirty (30) days only if the absence is covered by FMLA or workers compensation.

Beyond the thirty (30) days leave, contract coverage continues for the length of the employee's absence. Payment of the State's share of life insurance premiums will continue for the first four (4) months the employee is on leave without pay for medical reasons. The State's share of health and dental insurance premiums will continue for the first four (4) months of an employee's leave due to approved workers' compensation injury if the employee has exhausted all paid sick leave.

Rights upon Return from Leave without Pay

For an unpaid leave of absence not covered under FMLA or the Uniformed Services Employment and Reemployment Rights Act (USERRA), when the leave without pay expires, an employee has the right to return to the previous position or one of like nature for positions covered by the AFSCME of UE/IUP agreements; and, if covered by AFSCME, the position must be in the same organizational unit. Check the agreements for the applicable language.

If the employee's position or one of like nature is not available at the time of an employee's return from leave without pay, the layoff procedure will be implemented.

Upon returning from FMLA leave, an employee is entitled to the same position, or an "equivalent position." An equivalent position is one with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility, and authority.

See section [6.10 Types of Leave](#) for information on employees returning to work from military leave.

Adjustments to Employment/Seniority Dates for Employees Covered by AFSCME or UE/IUP

The following rules apply to adjusting employment and seniority dates for contractual employees when they return from leave without pay:

- An employee's seniority date does not change unless the period of leave without pay exceeds two years or there is a break in service as defined by contract language.
- An individual's adjusted employment date (from which the rate of vacation accrual is computed) is not adjusted for periods of leave without pay. However, the employee does not earn vacation or sick leave during any period of unpaid leave.

Paid Leaves of Absence

Contract-covered employees are eligible for paid leaves of absence as outlined in section [6.10 Types of Leave](#).